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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/528,479	03/17/2000	Rodney M. Goodman	06618/120002/CIT2580-D1	5202
20985	7590	06/17/2005	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			HOYE, MICHAEL W	
			ART UNIT	PAPER NUMBER
			2614	

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/528,479	Applicant(s) GOODMAN ET AL.	
	Examiner Michael W. Hoye	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3 and 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 is/are allowed.
- 6) ☒ Claim(s) 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 September 2004 and 17 March 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicants' arguments regarding canceled claim 1, which is now part of amended claim 3, and other remarks related to amended claim 3, originally filed on April 28, 2005 and entered on May 27, 2005 with the Request for Continued Examination, have been fully considered but they are not persuasive.

Regarding canceled claim 1, now incorporated into amended independent claim 3, the Applicants argue on page 4 that, "it is agreed that Echeita, et al. teaches an error resolution procedure, however that error resolution procedure is not precisely the same as claimed since it is not carried out in a clearinghouse as claimed."

In response, the Examiner respectfully disagrees with the Applicants because the Echeita et al reference does teach an error resolution procedure that is carried out in a clearinghouse as met by the advertisement reconciliation system computer 38 (Fig. 1, see col. 10, lines 49-53) and the billing accounts system 40, where the system computer 38 (or clearinghouse) determines if the commercial actually aired at the specified time by automatically detecting the contract number and contract line number as well as the time spot aired information from the broadcast data stream, and the accounting procedures allow the program provider and advertiser to make an immediate judgment on whether the commercial aired at the specified time and to point out discrepancies if an error occurs (col. 8, lines 8-21 & 31-65; and col. 10, lines 49-58). Moreover, the claimed error resolution procedure is met as described in part in col. 8, lines 50-65, col. 10, lines 41-58, and more explicitly in conjunction with col. 3, lines 5-14 and col. 4, lines 42-48,

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where the various attributes and/or parameters of actual advertisements as broadcast are gathered, and the attributes/parameters are compared with contractually agreed upon attributes/parameters, which is known as advertisement reconciliation. The “assembled reconciliation data may be sent to a computer for additional processing such as comparing the assembled reconciliation data with the various contractually agreed-upon parameters and identifying any discrepancies between the two. The computer may route the reconciliation data and/or processed reconciliation data...to a billing and accounting system that would use the reconciliation data to finalize the sale and initiate billing.” When a discrepancy occurs, such as a commercial airing at the wrong time, problems may be researched to find the cause of the problem, the advertiser may be billed less or not billed (depending on the contract), and/or the commercial may be aired at another time as a “make good” for a commercial previously missed (also depending on the contractually agreed on attributes/parameters).

Regarding independent claim 3, the Applicants further argue on pages 4-6 that, “Claim 3 specifies that the security comprises information on the advertising segment “correlated with content of the advertising segment”... Echeita does not correlate with the content.”

The Applicants conclude that, “Nothing in the prior art teaches or suggests that the security information is correlated with the content of the advertising segment.”

In response, the Examiner respectfully disagrees with the Applicants because the Echeita et al reference discloses in col. 5, lines 43-53, that:

“The received programming and advertisements, along with data signals such as the advertisement reconciliation data, electronic program guide data, and security access data, are sent to the video/audio data encoding system 26 where they are digitally encoded into a packetized data stream using a number of algorithms, including convolutional error correction and compression. In a conventional manner, the reconciliation data is coordinated with a particular commercial spot

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and encoded into data packets that accompany the data packets that form the actual advertisement.”

The Applicants' claim language which states, “wherein said security comprises information on the advertising segment correlated with content of the advertising segment” uses broad language for the claimed, “content of the advertising segment”. As previously described in the last Office Action, Echeita discloses digitally encoding data packets that accompany the data packets that form the actual advertisement (see col. 5, lines 43-67), where the data packets include numbers or identifiers that identify the actual advertisement (col. 5, lines 4-14).

Furthermore, the Echeita et al reference discloses, as described above in col. 5, lines 43-53, that the reconciliation data, security access data, etc., are coordinated with a particular commercial spot and encoded into data packets that accompany the data packets that form the actual advertisement.

### *Drawings*

2. The marked-up replacement drawing sheet for Fig. 2 was received on 9/7/04. The corrections indicated on this drawing are acceptable. The Applicants are requested to submit formal drawings for this Figure and for all the remaining Figures originally filed on 3/17/00.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Echeita et al (USPN 5,826,165), cited by the Examiner.

As to claim 3, note the Echeita et al reference which discloses an advertisement reconciliation system, that includes a method of scheduling and paying for advertising. The claimed "booking an advertising segment with an advertising agency" is met by a contract (col. 3, lines 40-41) or contractually agreed upon attributes/parameters (col. 4, lines 42-47; also see Ad Agency 38 in Fig. 1). The Echeita reference discloses the claimed booking for said advertising segment comprising determining time (col. 3, lines 30-36), network (col. 1, lines 15-17 and col. 7, line 48), and pricing (col. 1, lines 19-20). It would have been obvious to one of ordinary skill in the art to have the claimed booking further include commission parameters for said advertising segment since Echeita discloses that the contract agreed upon may include various attributes/parameters (col. 4, lines 42-47) and it is well known in the art of scheduling advertisements to include various commission incentives according to the accuracy of the broadcaster airing the commercial at the correct time, during a promotional period, or various other related parameters for the advantage of increasing sales and revenue for the broadcasters and ad agencies. The claimed "establishing an account with a clearinghouse" is met by the advertisement reconciliation system computers 38 (Fig. 1) and the billing accounts system 40, where the system computers 38 determine if the commercial actually aired at the specified time by automatically detecting the contract number and contract line number as well as the time spot aired information from the broadcast data stream, the accounting procedures allow the program provider and advertiser to make an immediate judgment on whether the commercial aired at the

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specified time and to point out discrepancies if an error occurs (col. 8, lines 8-21 & 31-65; and col. 10, lines 49-59). Moreover, the claimed error resolution procedure is described in part in col. 8, lines 50-65, col. 10, lines 41-58, and more explicitly in conjunction with col. 3, lines 5-14 and col. 4, lines 42-48, where the various attributes and/or parameters of actual advertisements as broadcast are gathered, and the attributes/parameters are compared with contractually agreed upon attributes/parameters, which is known as advertisement reconciliation. The “assembled reconciliation data may be sent to a computer for additional processing such as comparing the assembled reconciliation data with the various contractually agreed-upon parameters and identifying any discrepancies between the two. The computer may route the reconciliation data and/or processed reconciliation data...to a billing and accounting system that would use the reconciliation data to finalize the sale and initiate billing.” When a discrepancy occurs, such as a commercial airing at the wrong time, problems may be researched to find the cause of the problem, the advertiser may be billed less or not billed (depending on the contract), and/or the commercial may be aired at another time as a “make good” for a commercial previously missed (also depending on the contractually agreed on attributes/parameters). In addition to, the advertisements and other data signals encoded and transmitted along with security access data (col. 5, lines 43-67) and the security of the data transmitted is decrypted and processed by access control circuits (col. 6, lines 30-64). The claimed wherein said security comprises information on the advertising segment correlated with content of the advertising segment is met by digitally encoding data packets that accompany the data packets that form the actual advertisement (see col. 5, lines 43-67), where the data packets include numbers or identifiers that identify the actual advertisement (col. 5, lines 4-14). Furthermore, the Echeita et al reference discloses in col. 5,

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lines 43-53, that the reconciliation data, security access data, etc., are coordinated with a particular commercial spot and encoded into data packets that accompany the data packets that form the actual advertisement.

### *Allowable Subject Matter*

5. Claim 4 is allowed.

As to claim 4, the prior art alone or in combination does not disclose or suggest that the security comprises information on the advertising segment correlated with content of the advertising segment, that comprises information indicative of an average brightness of at least part of the advertising segment.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hite et al (USPN 5,774,170) – Discloses a system and method for delivering targeted advertisements to consumers, and further includes the use of context codes used with advertisements.

Hite et al (USPN 6,002,393) – Discloses a system and method for delivering targeted advertisements to consumers, and further includes the use of context codes used with advertisements.

Lert, Jr. et al (4,230,990) – Discloses a broadcast program identification method and system.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael W. Hoyer whose telephone number is (571) 272-7346.

The examiner can normally be reached on Monday to Friday from 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at (571) 272-7353.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (571) 272-2600.

Michael W. Hoyer  
June 10, 2005



**JOHN MILLER**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**